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Global Acceptance Company, LLC
7 and GAC GP, LLC

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 JENNIFER LEIGH REED,

13 Plaintiff,

14 vs.

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16 GLOBAL ACCPETANCE CREDIT
COMPANY, a Texas Limited
17 Partnership; and GAC GP, LLC, a
Texas Corporation,

18 Defendants.
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CASE NO.: C08 01826 RMW (RS)

**ANSWER OF DEFENDANTS TO
COMPLAINT**

1 Defendants GLOBAL ACCEPTANCE CREDIT COMPANY and GAC GP, LLC
2 (“Defendants”) hereby submits the following Answer to the Complaint filed in this
3 action by plaintiff JENNIFER LEIGH REED (“Plaintiff”):

4 1. In answering Paragraph 1 of the Complaint, Defendants aver that the
5 contents of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* and the
6 Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* are
7 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 1
8 are denied.

9 2. In answering Paragraph 2 of the Complaint, Defendants admit that Plaintiff
10 alleges that jurisdiction of this Court arises under 15 U.S.C § 1692k(d), 28 U.S.C. §
11 1337 and that supplemental jurisdiction exists for Plaintiff’s state law claims pursuant
12 to 28 U.S.C. § 1367. Except as herein admitted, the remaining allegations of Paragraph
13 2 are denied.

14 3. Denied.

15 4. In answering Paragraph 4 of the Complaint, Defendants admit that Plaintiff
16 alleges that venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and that
17 venue is proper pursuant to 15 U.S.C. § 1692k(d). Defendants further admit that
18 Global Acceptance Credit Company transacts interstate business with residents of the
19 Northern District of California. Except as herein admitted, the remaining allegations of
20 Paragraph 4 are denied.

21 5. In answering Paragraph 5 of the Complaint, Defendants admit that Plaintiff
22 alleges that this lawsuit should be assigned to the San Jose Division of this Court.
23 Except as herein admitted, the remaining allegations of Paragraph 5 are denied.

24 6. In answering Paragraph 6 of the Complaint, Defendants admit, on
25 information and belief, that Plaintiff is a natural person residing in Santa Clara County,
26 California. Defendants lack sufficient knowledge to form a belief as to whether
27 Plaintiff’s financial obligation at issue was incurred primarily for personal, family or
28 household purposes, and therefore can neither admit nor deny whether Plaintiff

1 qualifies as a “consumer” as defined by 15 U.S.C. § 1692a(3) or as a “debtor” as
2 defined by California Civil Code § 1788.2(h). On that basis, Defendants deny the
3 allegations. Except as herein admitted, the remaining allegations of Paragraph 6 are
4 denied.

5 7. In answering Paragraph 7 of the Complaint, Defendants admit that
6 defendant Global Acceptance Credit Company (“Global”) is a Texas limited
7 partnership with its principal place of business located at 5850 West Interstate 20, Suite
8 100, Arlington, Texas 76017. Defendants further admit that Global has, at times, acted
9 as a debt collector as defined by 15 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c)
10 and that it uses the mail and telephone to conduct its business. Except as herein
11 admitted, the remaining allegations of Paragraph 7 are denied.

12 8. In answering Paragraph 8 of the Complaint, Defendants admit that
13 defendant GAC GP, LLC (“GAC”) is a Texas limited liability company with its
14 principal place of business located at 5850 West Interstate 20, Suite 100, Arlington,
15 Texas 76017. Defendants further admit that GAC is a general partner of Global.
16 Except as herein admitted, the remaining allegations of Paragraph 8 are denied.

17 9. Denied.

18 10. Admitted.

19 11. Admitted.

20 12. In answering Paragraph 12 of the Complaint, Defendants admit that Global
21 sent Plaintiff a letter dated April 10, 2007, the contents of which are self-explanatory.
22 Except as herein admitted, the remaining allegations of Paragraph 12 are denied.

23 13. In answering Paragraph 13 of the Complaint, Defendants admit that Global
24 sent Plaintiff a letter dated April 10, 2007, the contents of which are self-explanatory.
25 Except as herein admitted, the remaining allegations of Paragraph 13 are denied.

26 14. In answering Paragraph 14 of the Complaint, Defendants admit that Global
27 sent Plaintiff a letter dated April 10, 2007, the contents of which are self-explanatory.
28 Except as herein admitted, the remaining allegations of Paragraph 14 are denied.

1 15. In answering Paragraph 15 of the Complaint, Defendants admit that Global
2 sent Plaintiff, a letter dated April 10, 2007, the contents of which are self-explanatory.
3 Defendants admit that this letter was Global's first correspondence to Plaintiff. Except
4 as herein admitted, the remaining allegations of Paragraph 15 are denied.

5 16. In answering Paragraph 16 of the Complaint, Defendants admit that Global
6 received a letter from Plaintiff dated April 25, 2007, the contents of which are self-
7 explanatory. Except as herein admitted, the remaining allegations of Paragraph 16 are
8 denied.

9 17. In answering Paragraph 17 of the Complaint, Defendants admit that Global
10 received a letter from Plaintiff dated April 25, 2007, the contents of which are self-
11 explanatory. Except as herein admitted, the remaining allegations of Paragraph 17 are
12 denied.

13 18. In answering Paragraph 18 of the Complaint, Defendants admit that Global
14 received, on or about May 3, 2007, a letter from Plaintiff dated April 25, 2007, the
15 contents of which are self-explanatory. Except as herein admitted, the remaining
16 allegations of Paragraph 18 are denied.

17 19. In answering Paragraph 19 of the Complaint, Defendants admit that Global
18 received, on or about May 3, 2007, a letter from Plaintiff dated April 25, 2007, the
19 contents of which are self-explanatory. Except as herein admitted, the remaining
20 allegations of Paragraph 19 are denied.

21 20. In answering Paragraph 20 of the Complaint, Defendants admit that Global
22 received, on or about May 3, 2007, a letter from Plaintiff dated April 25, 2007.
23 Defendants further admit that after that date, representatives of Global contacted
24 Plaintiff. Except as herein admitted, the remaining allegations of Paragraph 20 are
25 denied.

26 21. In answering Paragraph 21 of the Complaint, Defendants admit that Global
27 sent a letter to Plaintiff dated July 25, 2007, the contents of which are self-explanatory.
28 Except as herein admitted, the remaining allegations of Paragraph 21 are denied.

1 22. In answering Paragraph 22 of the Complaint, Defendants admit that Global
2 sent a letter to Plaintiff dated August 7, 2007, the contents of which are self-
3 explanatory. Except as herein admitted, the remaining allegations of Paragraph 22 are
4 denied.

5 23. In answering Paragraph 23 of the Complaint, Defendants admit that Global
6 sent a letter to Plaintiff dated August 7, 2007, the contents of which are self-
7 explanatory. Except as herein admitted, the remaining allegations of Paragraph 23 are
8 denied.

9 24. In answering Paragraph 24 of the Complaint, Defendants admit that Global
10 sent a letter to Plaintiff dated August 7, 2007, the contents of which are self-
11 explanatory. Except as herein admitted, the remaining allegations of Paragraph 24 are
12 denied.

13 25. In answering Paragraph 25 of the Complaint, Defendants admit that a
14 representative of Global placed a telephone call to Plaintiff on or about August 27,
15 2007 and left a message on Plaintiff's answering machine, the contents of which are
16 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 25
17 are denied.

18 26. In answering Paragraph 26 of the Complaint, Defendants admit that a
19 representative of Global placed a telephone call to Plaintiff on or about September 10,
20 2007 and left a message on Plaintiff's answering machine, the contents of which are
21 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 26
22 are denied.

23 27. In answering Paragraph 27 of the Complaint, Defendants admit that a
24 representative of Global placed a telephone call to Plaintiff on or about September 13,
25 2007 and left a message on Plaintiff's answering machine, the contents of which are
26 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 27
27 are denied.
28

1 28. In answering Paragraph 28 of the Complaint, Defendants admit that a
2 representative of Global placed a telephone call to Plaintiff on or about September 17,
3 2007 and left a message on Plaintiff's answering machine, the contents of which are
4 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 28
5 are denied.

6 29. In answering Paragraph 29 of the Complaint, Defendants admit that a
7 representative of Global placed a telephone call to Plaintiff on or about October 2, 2007
8 and left a message on Plaintiff's answering machine, the contents of which are self-
9 explanatory. Except as herein admitted, the remaining allegations of Paragraph 29 are
10 denied.

11 30. In answering Paragraph 30 of the Complaint, Defendants admit that a
12 representative of Global placed a telephone call to Plaintiff on or about October 5, 2007
13 and left a message on Plaintiff's answering machine, the contents of which are self-
14 explanatory. Except as herein admitted, the remaining allegations of Paragraph 30 are
15 denied.

16 31. Denied

17 32. Denied.

18 33. In answering Paragraph 33 of the Complaint, Defendants admit that Global
19 sent a letter to Plaintiff dated October 5, 2007, the contents of which are self-
20 explanatory. Except as herein admitted, the remaining allegations of Paragraph 33 are
21 denied.

22 34. In answering Paragraph 34 of the Complaint, Defendants admit that Global
23 sent a letter to Plaintiff dated October 5, 2007, the contents of which are self-
24 explanatory. Except as herein admitted, the remaining allegations of Paragraph 34 are
25 denied.

26 35. In answering Paragraph 35 of the Complaint, Defendants admit that Global
27 sent a letter to Plaintiff dated October 5, 2007, the contents of which are self-
28

1 explanatory. Except as herein admitted, the remaining allegations of Paragraph 35 are
2 denied.

3 36. In answering Paragraph 36 of the Complaint, Defendants admit that Global
4 sent a letter to Plaintiff dated January 24, 2008, the contents of which are self-
5 explanatory. Except as herein admitted, the remaining allegations of Paragraph 36 are
6 denied.

7 37. In answering Paragraph 37 of the Complaint, Defendants admit that Global
8 sent a letter to Plaintiff dated January 24, 2008, the contents of which are self-
9 explanatory. Except as herein admitted, the remaining allegations of Paragraph 37 are
10 denied.

11 38. In answering Paragraph 38 of the Complaint, Defendants admit that Global
12 sent a letter to Plaintiff dated January 24, 2008, the contents of which are self-
13 explanatory. Except as herein admitted, the remaining allegations of Paragraph 38 are
14 denied.

15 39. In answering Paragraph 39 of the Complaint, Defendants admit that
16 Plaintiff purports to bring her first claim for relief under the Fair Debt Collection
17 Practices Act, 15 U.S.C. § 1692 *et seq.* Except as herein admitted, the remaining
18 allegations of Paragraph 39 are denied.

19 40. Defendant incorporates by reference paragraphs 1-38 above, as if fully
20 stated herein.

21 41. Admitted.

22 42. In answering Paragraph 42 of the Complaint, Defendants admit that Global
23 has, at times, acted as a debt collector as defined by 15 U.S.C. § 1692a(6). Except as
24 herein admitted, the remaining allegations of Paragraph 42 are denied.

25 43. Denied.

26 44. Admitted.

27 45. Denied.

28 46. Denied.

1 47. Denied.

2 48. Denied

3 49. In answering Paragraph 49 of the Complaint, Defendants admit that
4 Plaintiff purports to bring her second claim for relief under the Rosenthal Fair Debt
5 Collection Practices Act, Cal. Civ. Code §§ 1788 -1788.33. Except as herein admitted,
6 the remaining allegations of Paragraph 49 are denied.

7 50. Defendant incorporates by reference paragraphs 1-48 above, as if fully
8 stated herein.

9 51. Admitted.

10 52. In answering Paragraph 52 of the Complaint, Defendants admit that Global
11 has, at times, acted as a debt collector as defined by Cal. Civ. Code § 1788.2(c). Except
12 as herein admitted, the remaining allegations of Paragraph 52 are denied.

13 53. Denied.

14 54. Admitted.

15 55. Denied.

16 56. Denied.

17 57. Denied.

18 58. Denied.

19 59. Denied.

20 60. Denied.

21 61. In answering Paragraph 61 of the Complaint, Defendants aver that the
22 contents of Cal. Civ. Code § 1788.32 are self-explanatory. Except as herein admitted,
23 the remaining allegations of Paragraph 61 are denied.

24
25 **AFFIRMATIVE DEFENSES**

26 As and for separate affirmative defenses to the Complaint, Defendants
27 allege as follows:
28

FIRST AFFIRMATIVE DEFENSE**(Failure to State a Claim)**

The allegations of the Complaint fail to state a claim against Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE**(Statute of Limitations/Laches)**

The purported claims set forth in the Complaint are barred in whole or in part by the applicable statutes of limitation and/or the equitable doctrine of laches.

THIRD AFFIRMATIVE DEFENSE**(Bona Fide Error)**

To the extent that any violation of law occurred, which Defendants expressly deny, said violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Defendants of procedures reasonably adapted to avoid any such error.

FOURTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

The allegations in the Complaint and relief requested are, on information and belief, barred in whole or in part by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE**(No Wilful Conduct)**

Defendants acted in good faith at all times in their dealings with Plaintiff, and if any conduct by Defendants is found to be unlawful, which Defendants expressly deny, such conduct was not willful and should not give rise to liability.

SIXTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendants.

SEVENTH AFFIRMATIVE DEFENSE**(Waiver)**

Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and admissions with respect to the debt.

EIGHTH AFFIRMATIVE DEFENSE**(Good Faith)**

Defendant have, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

NINTH AFFIRMATIVE DEFENSE**(Apportionment)**

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendants. The liability, if any exists, of all Defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of these Defendants should be reduced accordingly.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Supervening Cause)**

3 The causes of action in the Complaint are barred, in whole or in part, to the
4 extent that any injury or loss sustained was caused by intervening or supervening events
5 over which Defendants had or have no control.

6
7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Equitable Indemnity)**

9 To the extent that Plaintiff has suffered any damage as a result of any alleged act
10 or omission of Defendants, which Defendants deny, Defendants are entitled to equitable
11 indemnity according to comparative fault from other persons and/or entities causing or
12 contributing to such damages, if any.

13
14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Setoff)**

16 To the extent that Plaintiff has suffered any damage as a result of any alleged act
17 or omission of Defendants, which Defendants deny, Defendants are, on information and
18 belief, entitled to a setoff in the amount Plaintiff owes on her unpaid account, including
19 any recoverable interest and attorneys' fees.

20
21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Not Debt Collector)**

23 Defendant GAC GP, LLC is not a debt collector under state or federal law.

24
25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 **(First Amendment)**

27 Defendants' alleged conduct and communications in attempting to collect a debt
28 are entitled to protection under the First Amendment of the Constitution of the United

1 States. Plaintiff's proposed interpretation of the provisions of the FDCPA and
2 Rosenthal Act must be rejected as they would place an unreasonable restraint upon the
3 exercise of Defendants' rights, thereby raising serious constitutional issues.

4
5 WHEREFORE, Defendants request judgment as follows:

- 6 1. That Plaintiff takes nothing by the Complaint, which should be dismissed
7 with prejudice.
- 8 2. That Defendants recover from Plaintiff costs according to proof.
- 9 3. That Defendants recover attorneys' fees according to proof.
- 10 4. That the Court orders such other further reasonable relief as the Court may
11 deem just and proper.

12
13 DATED: April 30, 2008

SIMMONDS & NARITA LLP
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JEFFREY A. TOPOR

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16
17 By: s/Tomio B. Narita
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